

6 Amending A Budget

OVERVIEW



If you have not obtained FDIC approval for a budget sufficient to complete a matter, you must submit an amended case plan and budget. Under what circumstances might this occur? Generally, the budget must be amended when estimates change.

Written approval from the Legal Division is required for any increase in the total budget amount. Make sure the amendments have been approved before you exceed the budget.

Legal Division management allows exceptions to this policy only when extraordinary circumstances arise.



WARNING: *Failure to obtain written FDIC approval for an amended budget will be deemed a serious breach of your duty to the FDIC and may result in non-payment or disallowance of fees or expenses exceeding authorized amounts. You must report to the FDIC Oversight Attorney immediately any anticipated budget changes.*

If your work is exceeding your budget, make sure the FDIC has approved your budget amendments.

This chapter gives you information on the following:

- ⇒ Amending the case plan and budget
- ⇒ Amending the Budget Worksheet

SCENARIO***What's Wrong With my Budget?***

Attorney Peter Williams realized that he would have to exceed the budgeted amount for the matter he was working on for the FDIC. He immediately called Maggie Lyons, the FDIC Oversight Attorney.

Peter: I'm going to go over budget! Should I stop work?

Maggie: Not necessarily. However, you must file an amended case plan and budget form immediately, before you exceed your approved budget.

Peter: An amended budget? What's that?

Maggie: It's like the budget you submitted to us before, but you enter the new billing requirements into another form, and the FDIC considers it for approval. Peter, why do you need to exceed your original budget?

Peter: Well, yesterday some claims were made against the FDIC that I hadn't anticipated and immediate action is needed...

Maggie: Okay. You've advised us promptly which was the right thing to do. Make sure you submit the amended case plan and amended budget right away.

Peter: Great! I'll consult my **Outside Counsel Deskbook** right away for procedures on completing an amended case plan and budget form.

Maggie: I'll get this approved so we can pay any invoices that exceed the current budget.

*You don't have to stop work if you realize you are going over budget. However, you must file an amended budget form **before** you exceed your approved budget.*

**AMENDING THE
CASE PLAN and
BUDGET**

To submit an amended budget and case plan, you need to complete an amended budget package which contains:

- An amended case plan
- An amended budget form
- An amended budget worksheet (required when fees and expenses are estimated to be greater than \$25,000 or when the FDIC Attorney requests a worksheet); see *Page 6-6* for information on the amended budget worksheet.

Refer to Appendix A for sample amended budget forms and worksheets.

**Amended Case
Plan and Budget
Completion Steps**

Following are the steps for completing an amended case plan and budget.

1. Complete an amended case plan. See Chapter 2 (Setting up a Budget) for details.
2. Select the amended budget form appropriate to your legal matter.
3. Indicate in the appropriate box whether you are billing at an hourly rate, fixed fee, contingent fee, or TOA fee basis.
4. Refer to the table on the following page for action to take according to the billing rate you entered.

**AMENDING THE
CASE PLAN and
BUDGET
(cont.)**

**Amended Case
Plan and Budget
Completion Steps
(cont.)**

RATE	ACTION
Hourly	⇒ Complete all phases of the budget for which legal expenses are expected to be incurred
Fixed Fee	⇒ Record the fixed fee ⇒ Record the contingent fee ⇒ Submit the estimated completion date and allowable related expenses for each phase
Contingent Fee	⇒ Submit the estimated completion date and expenses for each phase ⇒ Document the percentage figure to be used in the contingent fee calculation and the estimated recovery amount (or other amount) upon which the percentage figure will be calculated
TOA	⇒ Record the appropriate fee

Use this table as a guide to the action to take for each type of billing rate.

**AMENDING THE
CASE PLAN and
BUDGET
(cont.)****Amended Case Plan
and Budget
Completion Steps
(cont.)**

5. Note the estimated completion dates and allowable related expenses.
6. Calculate the total estimated number of hours for all service providers for each phase or action.
7. Mark the appropriate box if you have submitted a previous amended budget.
8. Use the most recent approved figures in the column for “current budget.”
9. Sign and date the budget.

**Checklist for the
Amended Case Plan
and Budget**

Before submitting your amended case plan and budget, check the following:

- ☒ Are the scope and detail of the amended case plan commensurate with the significance of the matter?
- ☒ Does your amended case plan summarize strategy and project the schedule for preparing and trying the case, including all expected litigation events?

**AMENDING THE
CASE PLAN and
BUDGET (cont.)****Checklist for the
Amended Case Plan
and Budget (cont.)**

If you submitted a budget worksheet with the original budget, have you included an amended budget worksheet with the amended budget?



Have you attached a narrative providing your justification for the amendments?



If you submitted a previous amended budget, have you marked the appropriate box?



Did you use the most recent approved budget figures in the column for “current budget?”

Don't forget to submit another budget worksheet if you included one with your original budget form.

**DO I NEED AN
AMENDED BUDGET
WORKSHEET?**

Sometimes you will need to complete an amended budget worksheet to submit with the amended budget form. The worksheet is a tool for the Oversight Attorney to collect needed details about the cost of legal representation. You do not need to complete an amended budget worksheet for Non-Litigation/ Transactional and Appellate Legal Matters, unless requested by the FDIC Oversight Attorney.

You must complete an amended budget worksheet for a Litigation/PLS or Bankruptcy matter if:

- Fees and expenses are estimated to be greater than \$25,000 or,
- The FDIC Attorney requests that you do so.

The budget worksheet provides the Oversight Attorney with more details about the budget.

DO I NEED AN AMENDED BUDGET WORKSHEET? (cont.)

Amended Budget Worksheet Completion Steps



Following are the steps for completing an amended budget worksheet.

1. Document the estimated total hours and legal fees for each legal action deemed necessary.
2. Describe any “other” actions and document the estimated total hours and legal fees associated with these “other” actions.
3. Itemize any related expenses for each phase on an attached sheet.

Checklist for the Amended Budget Worksheet



Before submitting your amended budget worksheet, refer to the following checklist.

- ☒ Have you documented the estimated total hours and legal fees for each legal action?
- ☒ Are the legal actions described in your case plan?
- ☒ Have you itemized related expenses for each phase on an attached sheet?
- ☒ Does the total for each phase of the amended budget worksheet equal the amount entered for each phase of the amended budget?

Check that the totals on your budget worksheet match the totals on your budget form.

DO I NEED AN AMENDED BUDGET WORKSHEET? (cont.)

Checklist for the Amended Budget Worksheet (cont.)



Does the grand total of all phases of the amended budget worksheet equal the dollar amount entered on the corresponding section of the amended budget?



Have you included amounts previously budgeted?

SUBMITTING THE AMENDED CASE PLAN and BUDGET

Amended Case Plan and Budget Submission Steps



Once you've ensured that your amended case plan and budget are correct and you are in agreement with the Oversight Attorney, follow the steps below.

1. Submit the amended budget package to the FDIC as instructed in your referral letter.
 2. The FDIC will notify you when your amended case plan and budget have been approved.
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**FREQUENTLY
ASKED
QUESTIONS**

Below you will find answers to questions often raised by Outside Counsel when amending budgets.

How soon do I need to submit an amended case plan and budget?

As soon as you know your fees and expenses are going to exceed your budget! If your fees and expenses exceed your budget – and you have not submitted an amended budget – you cannot be paid.

Should I keep track of what my balance is with the FDIC?

Absolutely! An amended case plan and budget are critical to ensuring you get paid promptly. If you don't know that you've depleted your allotted budget and you submit an invoice, you cannot be paid. Please make sure you know what your current balance is at all times.
